

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71502 of 2019

Arising Out of PS. Case No.-156 Year-2013 Thana- MAHILA P.S. District- Bhojpur

=====

DUDHNATH CHOUDHARY Son of Late Suraj Choudhary Resident of
Village - Near Buxar Golamber, ful Niwas Industrial Area, P.O. and P.S.-
Buxar Industrial Area, Buxar, Dist.- Buxar. Petitioner/s
Versus

1. The State of Bihar.
2. Bandana Devi W/o Jitendra Choudhary Resident of Village - Near Buxar
Golamber, Ful Niwas Industrial Are , P.O. and P.S.- Buxar Industrial Area,
Dist.- Buxar. At Present residing at Village - Suhiya, P.O.- Suhiya, P.S.-
Sahpur, Dist.- Bhojpur.

... .. Opposite Parties.

=====

Appearance :

For the Petitioner	:	Mr. Praveen Kumar, Advocate
For the O.P. No.2	:	Mr. Rajendra Narayan, Sr. Advocate
		Mr. Ramanuj Tiwary, Advocate
For the State	:	Mr. Ajay Kumar No. 2, APP

=====

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

5 02-02-2023 Heard learned counsel for the petitioner, learned

senior counsel for the opposite party no.2 and learned APP for

the State.

By invoking the jurisdiction under Section 482
Cr.P.C., the petitioner has approached this Court for quashing
the order dated 12.03.2019 passed by the learned Additional
Sessions Judge-XII, Bhojpur at Ara in Cr. Revision No.101 of
2018, by which the learned Judge has dismissed the criminal
revision application of the petitioner filed against the order
dated 16.04.2018 by which the application of the petitioner filed
under Section 239 Cr.P.C. has been rejected .

The prosecution case, in nut shell, is that the marriage
of the complainant/informant was solemnized on 04.12.1999 as



per Hindu rites and rituals with the accused no.1, Jitendra Choudhary and after marriage she went to her matrimonial house. Out of the said marriage, she blessed with three daughters. It is further alleged that after the birth of her third daughter, the accused persons started creating trouble with her. In the year 2011, the husband of complainant went to Mumbai for search of job. Thereafter, the mother of her husband and her daughter used to harass her. She narrated the entire story to her father upon which he reached and tried to convince the accused persons but of no result. It is further alleged that on 28th of August, 2013 accused no.1 (Jitendra Choudhary) has solemnized marriage with one Guriya Devi and out of the said wedlock they have one daughter. All the accused persons abused and assaulted her and they also taken her signature on the blank paper.

On the basis of the aforesaid complaint filed before the Chief Judicial Magistrate, Bhojpur at Ara, Complaint Case No.2258 (C)/2013 was instituted. The said complaint case was transferred before the police station and registered as Jagdishpur Mahila P.S. Case No.156/2013 for the offence punishable under Sections 341, 323, 406, 494 and 498A/34 of the Indian Penal Code. The S.D.J.M., Ara after perusal of the chargesheet and



case diary submitted by the Investigating Officer took cognizance against the petitioner and other accused persons under Sections 494 and 498A/34 of the Indian Penal Code. Thereafter, a petition under Section 239 of the Cr.P.C. was filed on behalf of two accused persons, namely, Phoolbadan Kunwar and Dudh Nath Chaoudhary (petitioner) submitting that they have been falsely implicated in the case with mala fide intention and some ulterior motive. They are living separately from the informant from the very inception and they have given an informatory petition before the CJM prior to filing of this case. After hearing the parties, the petition under Section 239 CrPC was rejected by the learned SDJM, Bhojpur at Ara. Thereafter, the petitioner filed Criminal Revision No. 101 of 2018 before the learned Additional Sessions Judge-XII, Bhojpur at Ara, which was also dismissed vide order dated 12.03.2019. Hence, this application.

It is submitted by learned counsel for the petitioner that petitioner is quite innocent and has committed no offence as alleged against him. As a matter of fact, the petitioner is brother-in-law (Nandosi) of the informant having separate mess and business. It is further submitted that the husband of the informant, after his marriage, was residing at Mumbai and



solemnized marriage with one Gudiya Devi (accused no. 2). Petitioner is having separate mess and business. Accordingly, it is submitted that both the learned courts below have erred in dismissing the petition filed by the petitioner. In buttress of his submission, learned counsel for the petitioner cited several judgments, namely, Krishnan and another vs. Krishnaveni and another reported in (1997) 4 SC 241, Shakuntla Devi and Others vs. Chamru Mahto and others reported in (2009) 2 SC 310, Prabhu Chawla vs. State of Rajasthan and another reported in (2016) 16 SC 30, Vikram Johar vs. State of Uttar Pradesh and another reported in (2019) 14 SC 207, Ramesh and Others vs. State of T.N. reported in (2005) 3 SC 507, K. Subba Rao and Others vs. State of Telangana represented by its Secretary, Department of Home and Others reported in (2018) 14 SC 452 and Geeta Mehrotra and Another vs. State of Uttar Pradesh and another reported in (2012) 10 SC 741.

Per contra, Mr. Rajendra Narayan, learned Senior Counsel appearing on behalf of opposite party no. 2 vehemently opposing the prayer of the petitioner submitted that the petitioner is the brother-in-law of the husband of the complainant and resides in the same house in which the entire family is residing. He guides the every member of her



husband's family and is instrumental in this whole episode. The complainant have three female children aged about 19, 17 and 15 years respectively. It is further submitted that at the instance of the petitioner the husband of the complainant had solemnized second marriage. It is lastly submitted that both the learned courts below have given concurrent findings, while dismissing the petitions filed by the petitioner, hence no second quashing petition is maintainable.

Having heard both sides and perusing the materials available on record as well as the judgments cited by learned counsel for the petitioner, in my considered opinion, the judgment cited by learned counsel for the petitioner are not applicable in the facts and circumstances of the present case. After patient hearing, this Court feels that the grounds raised by both sides are seems to be disputed questions of facts, such as, whether the petitioner, being the brother-in-law of the husband of the complainant, resides in the same house or petitioner having separate mess and business. Petitioner has not brought on record any document which shows that the petitioner is having separate mess and business and this fact has also not come in the case diary. These facts could only be decided by the trial court after conducting full trial and appreciating the



facts and evidence available on record.

In the result, this application merits no consideration
and is, accordingly, dismissed.

(Anjani Kumar Sharan, J)

Trivedi/-

U		T	
---	--	---	--

